

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 14402 of 2005

Between:

- 1 K.Shankar Babu S/o.Satyanarayana
R/o. Plot No.71 Markandeyanagar Kushaiguda,

Hyderabad.

- 2 Muddieneni Poorna Chandra Rao S/o.Ram Mohan Rao
Plot No.41, Markandeya Nagar Kushaiguda, Hyderabad.

..... PETITIONERS

AND

The Commissioner Kapra Municipal Corporation,
Ranga Reddy District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of the mandamus declaring the notice issued by the respondent in letter No.F2/1855/2005 dt.24.6.2005 is arbitrary, illegal, misconceived and violative of the principles of natural justice and pass such other order or orders.

Counsel for the Petitioner: MR.B.SOMASEKHAR

Counsel for the Respondent: MR.POLISETTI RADHAKRISHNA (SC FOR MPL)

The Court at the stage of admission made the following:

ORDER:

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This writ petition is filed against the impugned notice, styled as a final order, dated 24.06.2005, issued by the Commissioner, Kapra Municipality, Ranga Reddy, directing the petitioner to remove his cattle shed within 3 days from the date of receipt of the notice, basing on a complaint dated 20.05.2005 given by the Welfare Society, Subhashchandranagar, Kushaiguda. Assailing the correctness of the order, the writ petition is filed, mainly contending that under Sections 261 and 262 of the A.P. Municipalities Act, 1965 (hereinafter referred to as "the Act"), the Municipal Health Officer is competent person to issue a notice to the owner of the property, but the commissioner is not competent and empowered to issue such notices.

Heard the learned counsel appearing for the petitioners and the learned standing counsel appearing for the respondent Corporation.

The impugned notice was issued by the Commissioner of Kapra Municipality. The main contention of the petitioners is that the respondent is not competent person to issue such notice and the health officer is the competent person to issue the notice under the provisions of the Act. Sections 260, 261 and 262 of the Act read as follows:

Sec.260: Licenses for places in which animals are kept:

1. The owner or occupier of any stable, veterinary infirmary, stand, shed, yard or other place in which animals are kept or taken in for purposes of profit shall apply to the municipal health officer of a license not less than thirty days and not more than ninety days before the opening of such place, or the commencement of the year for which the license is sought to be renewed, as the case may be.
2. The municipal health officer may, by an order and under such restrictions and regulations as he thinks fit, grant or refuse to grant such license.
3. No person shall, without or otherwise than in conformity with a license, use any place for such a purpose;

Sec.261: General powers of control over stables, cattle-sheds and cow-houses:-

1. All stables, cattle-sheds and cow-houses whether they are built separately or whether they form part of the residential buildings shall be under the control of the municipal health officer as regards their site, construction, materials and dimensions.
2. The municipal health officer may by notice require that any stable, cattle-shed or cow-house be altered, paved, drained, repaired, disinfected or kept in such a state as to admit of its being sufficiently cleaned or be supplied with water or be connected with a sewer.
3. Every such notice shall be addressed to the owner of the building or land to which the stable cattle-shed or cow-house belongs.
4. The expense of executing any work in pursuance of any such notice shall be borne by the said owner.

Sec.262: Power to direct discontinuance of use of buildings as stable, cattle-sheds or cow-house:-

If any stable, cattle-shed or cow-house is not constructed or maintained in the manner required by or under this Act, the municipal health officer may, by notice, direct that the same shall be no longer used as a stable, cattle-shed or cow-house. Every such notice shall state the grounds on which it proceeds.

As per provisions under Sections 261 and 262 of the Act, the Municipal Health Officer has to issue notice to the petitioner if he found any contraventions against the petitioner. Without following due procedure as contemplated, the respondent issued the impugned notice, which is liable to be set aside.

In view of the facts and circumstances of the case, I deem it appropriate to allow the writ petition while setting aside the impugned order dated 24.06.2005. However, this order does not preclude the Municipal Health Officer to proceed against the petitioner in accordance with law, as contemplated under the provisions of the Act.

The Writ Petition is, accordingly, allowed. No order as to costs.

ELIPE DHARMA RAO,J

Dated: 05.07.2005

Dsr

Note:

**Issue operative portion by
wire at party’s costs.**

B/o

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner,
Kapra Municipal Corporation,
Ranga Reddy District

2. Two CD copies

*Form-NIC-OGS/WP{**MPL**}*